

leased. If the Borrower is an Eligible Passive Company which leases 100 percent of the new building's space to one or more Operating Companies, the Operating Company, or Operating Companies together, must follow the same rules set forth in this paragraph.

(b) If the SBA financing (whether 7(a) or 504) is for the acquisition, renovation, or reconstruction of an existing building, the Borrower may permanently lease up to 49 percent of the Rentable Property if the Borrower permanently occupies and uses no less than 51 percent of the Rentable Property. If the Borrower is an Eligible Passive Company which leases 100 percent of the space of the existing building to one or more Operating Companies, the Operating Company, or Operating Companies together, must follow the same rules set forth in this paragraph.

[68 FR 51679, Aug. 28, 2003]

ETHICAL REQUIREMENTS

§ 120.140 What ethical requirements apply to participants?

Lenders, Intermediaries, and CDCs (in this section, collectively referred to as "Participants"), must act ethically and exhibit good character. Ethical indiscretion of an Associate of a Participant or a member of a CDC will be attributed to the Participant. A Participant must promptly notify SBA if it obtains information concerning the unethical behavior of an Associate. The following are examples of such unethical behavior. A Participant may not:

- (a) Self-deal;
- (b) Have a real or apparent conflict of interest with a small business with which it is dealing (including any of its Associates or an Associate's Close Relatives) or SBA;
- (c) Own an equity interest in a business that has received or is applying to receive SBA financing (during the term of the loan or within 6 months prior to the loan application);
- (d) Be incarcerated, on parole, or on probation;
- (e) Knowingly misrepresent or make a false statement to SBA;
- (f) Engage in conduct reflecting a lack of business integrity or honesty;
- (g) Be a convicted felon, or have an adverse final civil judgment (in a case

involving fraud, breach of trust, or other conduct) that would cause the public to question the Participant's business integrity, taking into consideration such factors as the magnitude, repetition, harm caused, and remoteness in time of the activity or activities in question;

(h) Accept funding from any source that restricts, prioritizes, or conditions the types of small businesses that the Participant may assist under an SBA program or that imposes any conditions or requirements upon recipients of SBA assistance inconsistent with SBA's loan programs or regulations;

(i) Fail to disclose to SBA all relationships between the small business and its Associates (including Close Relatives of Associates), the Participant, and/or the lenders financing the Project of which it is aware or should be aware;

(j) Fail to disclose to SBA whether the loan will:

(1) Reduce the exposure of a Participant or an Associate of a Participant in a position to sustain a loss;

(2) Directly or indirectly finance the purchase of real estate, personal property or services (including insurance) from the Participant or an Associate of the Participant;

(3) Repay or refinance a debt due a Participant or an Associate of a Participant; or

(4) Require the small business, or an Associate (including Close Relatives of Associates), to invest in the Participant (except for institutions which require an investment from all members as a condition of membership, such as a Production Credit Association);

(k) Issue a real estate forward commitment to a builder or developer; or

(l) Engage in any activity which taints its objective judgment in evaluating the loan.

[61 FR 3235, Jan. 31, 1996, as amended at 68 FR 57980, Oct. 7, 2003]

CREDIT CRITERIA FOR SBA LOANS

§ 120.150 What are SBA's lending criteria?

The applicant (including an Operating Company) must be creditworthy.